COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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James M. Smith
President

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 25, 1997

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Universal Service, CC Docket No. 96-45

Dear Chairman Hundt:

The Commission currently is considering many important issues in connection with revisions to the universal service fund. One of those concerns is whether enhanced service providers ("ESPs") will be considered "providers of telecommunications services" under subsections 254(b)(4) and (d) of the Communications Act. Some parties have urged the Commission to conclude that ESPs are outside the scope of the Communications Act definition of providers of telecommunications services and, therefore, are not subject to universal service obligations. In CompTel's view, this definitional exemption from universal service payments would create many more problems than it solves. Moreover, it would set a dangerous and wholly unnecessary precedent.

Section 153(43) of the Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the format or content of the information as sent and received." A "telecommunications service" is defined by Section 153(46) as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." In comparison, "information service" is defined by Section 153(20) as "the offering of a capability for generating acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications," but does not include such functions when used for internal network purposes only.

These terms generally are believed to be equivalent to the Commission's "basic service" and "enhanced service" definitions. However, upon closer examination, it is apparent that there is substantial overlap between them. For example, "acquiring," "retrieving" or "making available" information generally is accomplished through a telecommunications service. It is possible to be both an "information service" and a "telecommunications service."

The Telecommunications Act of 1996 added many provisions to the Communications Act which rely on the term "telecommunications service." For example:

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- the resale obligations of Section 251(b)(1) apply to "telecommunications services" (some ILECs are already attempting to use this definition to refuse to permit resale of voice mail);

- the interconnection and unbundled network element ("UNE") obligations of Section 251 are available only to "telecommunications" carriers; and

- the pole attachment and rights-of-way provisions of Section 251(b)(4) give access to providers of "telecommunications services".

If ESPs are exempted from universal service obligations on the definitional basis that they are not "providers of telecommunications service, " the scope of these and other key provisions of the 1996 Act could be altered dramatically (and, presumably, inadvertently.)

This concern is exacerbated by the application of the Commission's practice of classifying services with any "enhanced" element as an unregulated "non-telecommunications" offering. This policy greatly expands the scope of the definitional approach and opens many opportunities for escaping obligations -- or being denied rights -- under the Act. The numerous ramifications of such a course strongly counsel against it.

If the Commission wishes to exempt ESPs from universal service obligations -- a result CompTel vehemently opposes -- it should at least avoid doing so in way that jeopardizes many other important competitive policy objectives. In the alternative, the Commission should defer this issue until it completes action in its Notice Of Inquiry ("NOI") regarding access charges and information service providers ("ISPs") (CC Docket No. 96-263). Inasmuch as the NOI involves many of the same issues, the Commission could approach this issue in more consistent fashion in the context of that proceeding.

The definitional approach, on the other hand, poses many risks. CompTel urges the Commission to avoid this threat by resisting requests to find ESPs outside the scope of "providers of telecommunications services" under Section 254(b)(4). If the Commission wishes to exempt ESPs from such obligations, it should do so directly, not by distorting important Communications Act definitions.

Sincerely,

James M. Smith
President

Attachment (CompTel Comments in CC Docket No. 96-263)

cc: Commissioner James Quello
Commissioner Susan Ness
Commissioner Rachelle Chong

DUPLICATE

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	
	)	

TO: The Commission

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"),[1] by its attorneys, hereby submits comments in response to the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (FCC 96-488) [hereinafter "NOI"] released by the Commission in the above-captioned proceeding on December 24, 1996. The NOI (at ¶ 312) asks parties to comment upon whether the Commission should "consider any additional actions relating to interstate information services and the Internet" once the Commission completes its reform of the access charge system. CompTel recommends that the Commission take the actions necessary to ensure reasonable parity between, on the one hand, the charges paid by information service and Internet access providers to use the local exchange network and, on the other hand, the interstate access charges that other carriers pay for using the same network.

At the outset, CompTel would emphasize that it does not object to the Commission's tentative conclusion in the access reform proceeding (CC Docket No. 96-262)

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[1] CompTel is an industry association representing approximately 200 providers of competitive telecommunications services.

that information service providers ("ISPs") should not pay interstate access charges "as currently constituted," and that such access charges should not apply to ISPs "at this time." NOI at ¶¶ 283 & 288. The Commission noted, and CompTel agrees, that the access charge system today contains "non-cost-based rates and inefficient rate structures." NOI at ¶ 288. The Commission should fix what is broken in the access charge system, not aggravate the damage that system is inflicting upon the industry and consumers by extending it to previously exempt carriers. Therefore, CompTel has not asked the Commission to remove the exemption that ISPs enjoy under the current access charge system.

At the same time, once the Commission has fashioned a more efficient and cost-oriented access charge system in CC Docket No. 96-262, there is no longer any justification for exemptions from access charge obligations based upon the nature of the carrier using the local exchange network. The Commission itself has recognized that the ISP exemption was intended to be temporary when it was first adopted in 1983, and that ultimately all rates paid by carriers for using the local exchange network should "converge." NOI at ¶¶ 9, 288. After the Commission has reformed the access charge system, it should begin proceedings at once to implement that convergence by ensuring reasonable parity in the access charges paid by all carriers who use the local exchange network to originate or terminate traffic.

After the Commission adopts final rules to reduce the current inflated access charges to more efficient levels, there is no reason to believe that imposing those charges even-handedly upon all carriers who use the local exchange network would increase unduly

the access costs of ISPs. In any event, no carrier can reasonably complain about paying the same cost-based access charges that other carriers are paying for the same uses of the local exchange network.[2] To the extent the Commission harbors rate shock concerns, it should adopt at most a short transition plan to incorporate ISPs into the access charge system.

CompTel categorically rejects the position that particular uses of the local exchange network should be favored through non-cost based access charge exemptions, or that Internet access and other enhanced service providers should pay less for the same use of the same local exchange network than competitive local and long distance carriers. The Commission observed in the NOI (at ¶ 285) that the phenomenal growth of information services might have been stunted if ISPs were required to pay inflated access charges under the system in place since 1983. Yet the Commission ignores the extent to which imposing non-cost based access charges on interexchange carriers for over a decade has impeded the efficient growth and development of long distance services. Any carrier segment will flourish if presented with a non-cost based exemption from paying the costs it imposes upon the network, just as any carrier segment will be stunted if forced to pay rates far higher than the costs it imposes upon the network. Rather than try to pick favored technologies, services, or types of carriers, the Commission should adopt an efficient, cost-based access

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[2] The Commission's view that the circuit-switched public network was not designed with information services in mind (NOI at ¶ 311) does not justify permitting ISPs to avoid paying the economic costs they cause by using that network to provide services to end-user subscribers. If an alternative infrastructure would better serve the needs of ISPs and their customers, then the Commission should explore creating efficient incentives for carriers to develop such an infrastructure. However, until such an infrastructure is built, ISPs should pay the economic costs caused by their use of the circuit-switched public network.

charge system for all carriers and permit the marketplace to govern the growth and development of particular market segments.

It is not meaningful for the Commission to explore ways to create incentives for efficient investment and innovation in the underlying network (NOI at ¶¶ 283 & 311) in an environment where any significant class of carriers is exempted from paying the economic costs that its use of the local exchange network causes. That is particularly true for Internet access and other enhanced services, which account for a substantial and growing percentage of all traffic routed over local exchange networks. In the NOI (at ¶ 285), the Commission noted that some ILECs have predicted that Internet traffic could represent 25-30% of all local exchange traffic within three years. The Commission cannot keep such a huge traffic stream out of the access charge system without completely undermining the economic efficiency of that system. In recognizing that the future regulatory treatment of enhanced services traffic implicates "no less than the future of the public switched telephone network" (NOI at ¶ 311), the Commission has effectively rebutted any contention that an efficient access charge system can be developed that excludes ISP traffic.

Therefore, for the foregoing reasons, CompTel submits that the Commission should take the actions necessary to ensure reasonable parity between, on the one hand, the charges paid by ISPs to use the local exchange network and, on the other hand, the interstate access charges that other carriers pay for using the same network.

Respectfully submitted,

By: _____

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Date: March 24, 1997

CERTIFICATE OF SERVICE

I, Marlene Borack, hereby certify that I have caused a copy of the foregoing "Comments of the Competitive Telecommunications Association," to be served on this 24th day of March 1997, via hand delivery, upon the following:

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